

The claimant appeared by his attorney, Frederick J. Patton II, of Topeka, Kansas. The respondent and its insurance carrier appeared by their attorney, Anton C. Andersen, of Kansas City, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board included the transcript of the preliminary hearing dated December 15, 1993 and the exhibits introduced at that hearing, as well as pleadings filed of record in this case.

ISSUES

Respondent contends that the Administrative Law Judge has exceeded his jurisdiction at the preliminary hearing by finding that claimant was entitled to temporary total disability benefits commencing September 7, 1993 through October 21, 1993, and November 5, 1993 through November 14, 1993, less one-half day that claimant worked, and by finding that the medical treatment provided by claimant's chiropractor was authorized from September 7, 1993 through September 10, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Administrative Law Judge's finding that Dr. Anthony's treatment from September 7, 1993 through September 10, 1993 was authorized medical care, did not exceed the Administrative Law Judge's jurisdiction.

The evidence produced at the preliminary hearing in this case indicates that claimant was injured on September 7, 1993 when he fell from a truck in the course of his work for the respondent. Claimant reported the accident to his employer. The employer referred him to the company doctor, Dr. Bono. Claimant asked for permission to see his own chiropractor, Dr. Anthony, because he was in acute pain and the trip to Dr. Bono's office was a 30 to 45 minute drive. Claimant testified that a representative of the employer, Brad Seaman, told him that he could go to Dr. Anthony. Claimant testified that on September 10, 1993 he was advised that none of Dr. Anthony's bills would be paid. The Administrative Law Judge found that Dr. Anthony's treatment from September 7, 1993 through September 10, 1993 was authorized and that treatment thereafter should be paid for as unauthorized medical expense.

K.S.A. 44-551 provides that a preliminary award is not subject to review by the Appeals Board unless the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested. The finding made by the Administrative Law Judge in this case that Dr. Anthony's treatment from September 7, 1993 through September 10, 1993 was authorized does not exceed the Administrative Law Judge's jurisdiction. Accordingly, that finding is not subject to review by the Appeals Board and remains in effect.

(2) The Administrative Law Judge's award of temporary total disability benefits from September 7, 1993 through October 21, 1993, and November 5, 1993 through November 14, 1993 did not exceed the Administrative Law Judge's jurisdiction.

There are two separate periods of temporary total disability in dispute. The first period in dispute is the period from September 7, 1993, the date of the accident, to September 21, 1993, the date Dr. Bono first saw claimant and advised that he not work. Claimant saw Dr. Anthony, a chiropractor on September 7, 1993, the date of the accident. Dr. Anthony took claimant off work. The respondent referred claimant to Dr. Bono and on September 21, 1993, the first visit, Dr. Bono also recommended claimant not return to work.

Respondent argues that it should not be responsible for temporary total benefits from September 7, 1993 through September 21, 1993 because claimant had not seen the authorized treating physician and had not been taken off work by an authorized physician. As above indicated the Administrative Law Judge did find that Dr. Anthony was authorized when he initially took claimant off work. Regardless, the Appeals Board again finds that the Order by the Administrative Law Judge awarding these temporary total disability benefits did not exceed his jurisdiction and is not subject to review by the Appeals Board. See K.S.A. 44-534a and K.S.A. 44-551.

The second period in dispute is the period from November 5, 1993 through November 14, 1993. Respondent did not pay claimant temporary total disability benefits for these dates because claimant had missed some of his physical therapy appointments during that period. Claimant testified that he did, in fact, miss some of his appointments. He recalled having missed one appointment because of car problems and the second because his children were home sick. He testified that in each case he called the physical therapist and was advised it would be okay; that he should simply come to his next appointment. Again, the Administrative Law Judge's decision awarding benefits for that period does not exceed his jurisdiction and is not subject to review by the Appeals Board. See K.S.A. 44-534a and K.S.A. 44-551.

AWARD

WHEREFORE, the Appeals Board finds that respondent's argument that the Administrative Law Judge exceeded his jurisdiction in his Preliminary Hearing Order of December 15, 1993 is without merit. That Preliminary Hearing Order does, therefore, remain in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Frederick J. Patton II, 3601 SW 29th, Topeka, Kansas 66614
Anton C. Andersen, P.O. Box 1300, Kansas City, Kansas 66117
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director